
IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

No. 77-1254

CYRUS R. VANCE, SECRETARY OF STATE, ET AL.,
Appellants

v.

HOLBROOK BRADLEY, ET AL.,
Appellees

On Appeal from the United States District Court
for the District of Columbia

**AMICUS CURIAE BRIEF OF NATIONAL COUNCIL
OF SENIOR CITIZENS
IN SUPPORT OF APPELLEES**

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STATEMENT OF INTEREST

The National Council of Senior Citizens (NCSC) is an organization of more than 3,500 older persons' clubs, with a total membership of more than three-and-a-half million persons. It is incorporated as a non-profit organization in the District of Columbia.

A majority of its members are retired from fulltime employment. Others are close to retirement, either voluntary or mandatory. NCSC has a deep interest in governmental and private employer policies that provide opportunities for employment for older Americans.

NCSS has participated as amicus before this Court in other cases affecting older persons, including *Allied Chemical Workers v. Pittsburgh Plate Glass*, 404 U. S. 107 (1971) and *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307 (1975).

The parties have agreed to the filing of this Brief. Their letters of consent are appended.

SUMMARY OF ARGUMENT

In *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307 (1975), this Court held that the appropriate standard for judicial review under the equal protection clause to challenges of a classification based on age is whether the distinction rests on rational grounds. The district court below, carefully applying the record before it to this legal standard, properly held the Foreign Service mandatory retirement provision unconstitutional. The *Murgia* standard provides the basis for this Court to affirm.

A major rationale offered for the compulsory retirement provision here is that it enhances advancement opportunities for young Foreign Service employees. Even if the "make room for the young" argument had factual validity, which it does not, a policy to favor young workers at the expense of their older colleagues is inherently discriminatory and unjust.

Another justification for the mandatory retirement of Foreign Service personnel over 60 is that older employees presumptively lack the physical and intellectual vigor to competently perform their jobs. According to this hypothesis, prolonged exposure to the rigors of overseas employment gradually drains Foreign Service employees of their vitality. If this theory were valid,

however, it should be equally applicable to the tens of thousands of other government employees working abroad in jobs and circumstances substantially similar to Foreign Service personnel who are not subject to compulsory retirement at 60. It is patently unfair to single out only Foreign Service employees for early mandatory retirement.¹

Nor does the record in this case support the government's assertion that Foreign Service employees lose their ability to effectively carry out their assignments upon reaching their sixtieth birthday. On the contrary, scientific data and uncontroverted evidence in the record establish the opposite. Based more on myths and stereotypes of older adults² than reality, the government's thesis is irrational and does not pass constitutional muster.

¹ There are of course other justifications occasionally offered for mandatory retirement. One is that employees—and employers—fear the trauma of an employee being told that he is no longer, on the basis of individual assessment, able to perform adequately. Thus, as economist Robert M. Macdonald writes:

Almost all employers with a mandatory retirement policy stress that a central benefit to employees is removal of the fear of being judged incompetent. In this view, mandatory retirement is an essential component of a less harsh, less contentious system of personnel management which assists the employee to plan retirement, to retire without the stigma of having been found wanting, and hence to enter retirement with pride and sense of self-worth intact.

R. M. Macdonald, *Mandatory Retirement and the Law* 16-17 (1978).

Here, of course, with its regular selection-out procedure, the Foreign Service has no basis for suddenly invoking this rationale for those aged 60.

² See, e.g., R. Butler, *Why Survive? Being Old in America* 6-16 (1975); Louis Harris and Associates, Inc., *The Myth and Reality of Aging in America* (1975); S. De Beauvoir, *Old Age* ch. 4 (1972).

ARGUMENT

I. A POLICY TO FAVOR YOUNG EMPLOYEES TO THE DETRIMENT OF THEIR OLDER COLLEAGUES IS INHERENTLY DISCRIMINATORY AND UNJUST.

The district court, in ruling for the plaintiffs, reasoned:

[A]n interest in recruiting and promoting younger people solely because of their youth is inherently discriminatory and cannot provide a legitimate basis for the statutory scheme.

436 F. Supp. at 136.

That court read the Constitutional rightly.

The government continues to maintain the contrary position. Thus, in its brief filed in this Court, the government devotes considerable effort to the argument that room must be made for the young, and that the challenged law, retiring people at age 60, is an appropriate mechanism for achieving this proper end:

[T]he mandatory retirement age creates "room at the top" so that there is a steady supply of promotion opportunities for the younger employees who must be promoted to stay in the service.

Appellants' Brief, at 29.

Even if this Court upholds the law challenged here, it must reach its decision on grounds which abjure any such notion as that which is propounded by the government. For that position is nothing less than a concerted effort, albeit one dressed in handsome verbiage, to deploy invidious discrimination against a group simply because its members possess a characteristic—a certain number of years—over which they have no control whatsoever. This is an unacceptable infliction of deprivation: "legal burdens should bear some relationship to individual responsibility or wrongdoing."

Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 175 (1972).

The make-room-for-the-young theme is, of course, a primary resort of proponents of age-based mandatory retirement. Invariably, they claim that forced ouster of older workers in no way demonstrates any antipathy towards these men and women; rather, involuntary retirement is a necessary method for absorbing the eager youngsters pressing on the labor market's doors and for opening up senior positions in hierarchical institutional structures.

Notwithstanding its considerable currency, the make-room-for-the-young argument is a bankrupt proposition. It fails on the facts, under the law, and in terms of simple justice.

A. The "Make Room For The Young" Argument Is Factually Invalid.

The factual flaws in the argument are numerous. First, it is erroneous to believe that retirement policies indeed open up any considerable number of jobs. Second, to the extent that job openings develop through the progressive movement out of senior employees, it is factually incorrect to believe that forced retirement is necessary to achieve this movement. And third, there is considerable inaccuracy in even contending that there is a sufficient number of young acolytes for whom room must be made.

The first and second factual errors merit joint analysis. A necessary predicate for contending that the old must be retired to make way for the young is the assumption that without forced ouster, the old will resistently hang on. Error abounds here. Rather than

workers seeking to stay on in their jobs, the consistent trend has been towards earlier and earlier voluntary retirement. For example, General Motors Corporation indicated that in 1976 only 2% of its retirees remained until the mandatory retirement age. "Mandatory Retirement: The Social and Human Cost of Enforced Idleness", Report by the Select Committee on Aging, U.S. House of Representatives, 95th Cong., 1st Sess., at 37-38 (1977).

Enterprises without any mandatory retirement report like figures. Bankers Life and Casualty Co., for example, has no compulsory retirement. In Congressional testimony, the Company asserted that the percentage of its work force 65 and over had not varied much over the last 20 years, and was, in 1977, 4% of the total. Hearing Before the Select Committee on Aging, U.S. House of Representatives, 95th Cong., 1st Sess., "Retirement Age Policies (Part I)", Testimony of Gerald L. Maguire, at 44 (1977).

The reality of work life is that most people leave their jobs before mandatory retirement would otherwise force them out. They do so for a number of reasons. Admittedly one of these is the simple recognition that they are soon going to be out anyway, given the looming imminent presence of the mandatory retirement age. But, in addition, there are significantly more important factors dictating early departure. For one, there is the common desire to simply stop working, after years of having done so. Other men and women, tired or bored with the jobs which they have held for numbers of years, seek other employment. Still other workers leave their positions because of ill health. And some die. Others seek a different climate, or greater

geographical proximity to their now-grown and departed children.

In sum, few workers stay on even until presently existing mandatory retirement ages. Indeed, the most extensive study yet done reveals that only 7% of all males aged 65 and over are able and willing to work, but are unable to find employment. Schulz, J., *The Economics of Aging* 61 (Belmont, Calif.: Wadsworth 1976). Assuming an annual outflow of 800,000 65-year-olds from the labor market each year, this means that a mere 56,000 men nationally are even potential re-entrants into the job market. This represents just .1 percent of the total labor force. Macdonald, R. M., *Mandatory Retirement and the Law* 22 (American Enterprise Institute for Public Policy Research 1978).

What is revealed by these figures is the fact that mandatory retirement is an unnecessary device for achieving job openings. Positions do open up as people move on, and virtually all of these positions would clearly continue to open up in a given enterprise if that enterprise abolished its mandatory retirement scheme.

There are other data, also, which further demonstrate how empty is the make-room-for-the-young argument. There is, for one, the disparity in qualifications between labor market departees and labor market entrants. "Of Americans now reaching retirement age, three out of four or more ended their education with junior high school or, at most, a year or two of senior high school." Drucker, "Flexible-Age Retirement", *Industry Week* 66, 67 (May 15, 1978). By contrast, the young people now entering the labor force have considerably more education. The consequence is that the jobs being vacated by older workers are the

ones which the younger entrants are simply not seeking.

Perhaps most trenchantly cutting against the demand for elders' ouster are some obvious demographic realities. We are, in fact, facing an imminent labor shortage. The "baby boom" of the '50's ultimately was supplanted by the "baby bust" of the '60's; the consequence is cogently delineated by Peter Drucker, in *The Unseen Revolution* 49-50 (1976):

The American birthrate dropped between 1960 and 1964 by more than 25 percent and it has not yet turned up. With twenty as the age at which significant numbers of young people in today's America first become available for "real" jobs, the number of new entrants into the work force will begin to decrease sharply by the end of the seventies and will keep on going down at least until the 1980's. Whatever happens to the birthrate in the interim period can have impact only after 1995.

For the mid-sixties until the mid-seventies, America each year had to find some 40 to 50 percent *more* jobs for young entrants into the working population than in any year between 1950 and 1965—the result of the "baby boom" between 1948 and 1959. From 1978 on, we will have each year up to 30 percent *fewer* entrants into the working population than we had in the ten years from 1967 to 1977.

The facts, then, do not sustain the make-room-for-the-young argument so often offered as justification for mandatory retirement. Even if mandatory retirement did not exist, there just would not be very many jobs in which people would stay on. Moreover, our problem for the future is not going to be too many people for too few jobs, but rather the reverse.

There is even deeper misconception embedded in the government's position here as well as, more generally, in the broad make-room-for-the-young argument. At base, the commitment to making room for younger workers depends upon an assumption: older people are on the mental decline. In other words, employers do not simply contend that they must hire young people because that is the nice thing to do, or that they must promote middle level people because that is the expected thing to do. They justify their hiring and promotion policies with the contention that what is needed are new blood, new ideas, agile intellects. By implication, the more senior workers are devoid of these characteristics. See Appellants' Brief, at 19.

Thus, an operative premises is that as a matter of functional ability, older people are intellectually deficient. Even if such a drastic misapprehension is abjured, proponents at the least must maintain that older people—or more accurately, people on the job a long time—are less receptive to, and/or less perceptive of, 'new' ideas. They may be intellectually adequate in terms of ability to think and to solve problems, but they simply are lacking because they have been around too long.

Both these postulates—that older people are intellectually deficient, and/or they are at the least incapable of absorbing and utilizing 'new' ideas—are of course unfounded and unwarranted. So far as functional ability is concerned, intelligence does not decline with age. See Section II-B, pp. 20-22, *infra*. And as for the notion that the young and inexperienced somehow wear a cloak of refreshing fervor, candor, naivete, or whatever, the very statement that callowness is an asset seems sufficient to rebut it. That is, unless this

Court is prepared to dispute the quality of work performed by Michaelangelo, Schweitzer, Churchill, Truman, Toscanini, Copland, and a host of other men and women, including, not incidentally, the very members of this Court. And see Appendix A, *infra*.

Amicus acknowledges that in certain settings the pressure for some assurance that slots will be available for promotions and hirings is particularly desirable. The more closed a system, the greater the need for this assurance. Thus, the government may here have a claim which cuts with somewhat greater urgency than might be the case in a more fluid setting—an automobile factory, let us say, or even the federal civil service generally. Still and all, the government's position is an untenable one. As the Select Committee on Aging of the U.S. House of Representatives has said: "Economists agree that there is no 'lump of labor' which permits an as-one-goes-out-one-comes-in type of revolving door concept of employment." "Mandatory Retirement: The Social and Human Costs of Enforced Idleness", Report by the Select Committee on Aging, United States House of Representatives, 95th Cong., 1st Sess., at 38 (1977).

It might well be concluded, in fact, that the government position here is particularly lacking in merit, given the Foreign Service's rigorous selection-out system. As is explained in appellants' brief:

Officers are ranked in "classes" and required to retire if they do not secure promotions within a specified number of years. The "selection-out" device is intended to "force attrition in a career service at a more rapid rate than is achieved by ordinary retirements" in order to guarantee "that

Foreign Service officers shall be promoted by selection on the basis of merit."

Appellants' Brief, at 27.

Thus, the Foreign Service—unlike most other institutional entities in the federal establishment—has a working mechanism which takes the measure of performance, and removes from the Service those who do not perform up to par. Room is regularly made for the young; indeed, there is an institutionalized device—the selection-out process—for assuring that very constancy of movement which the proponents of the make-room-for-the-young argument espouse. If the realities of illness, boredom, desire to retire, etc., debunk the argument that mandatory retirement is needed to assure movement, the Foreign Service's selection-out process adds dramatic emphasis to the barrenness of the argument.

B. Preferential Treatment Of A Class Without A Showing Of Past Constitutional Deprivations Denies Equal Protection.

Mr. Justice Powell very recently stated a virtual truism of equal protection: "It is far too late to argue that the guarantee of equal protection to *all* persons permits the recognition of special wards entitled to a degree of protection greater than that accorded others." *University of California Regents v. Bakke*, — U.S. —, 98 S.Ct. 2733, 2751 (1978). This statement was made in the context of a challenge to a racially-based preferential governmental program. Nonetheless, its message applies to all situations, including that here.

What is indeed operative in the present scheme is a preferential system, which singles out the young for

advantage. And this is done on the basis of just one criteria—age. As Justice Powell further stated in *Bakke*, 98 S.Ct. at 2752-53, “[T]here are serious problems of justice connected with the idea of preference itself.” Indeed there are. And indeed the problems arising out of preferential treatment for the young are in a sense even greater than those associated with preferential admissions programs based on racial concerns.

The distinctive gap between this case, and other instances in which some preference for one group has been sanctioned, is that here there is a total absence of past violations, the necessary predicate for present preference. Indeed, as Mr. Justice Powell wrote in *Bakke*:

We have never approved a classification that aids persons perceived as members of relatively victimized groups at the expense of other innocent individuals in the absence of judicial, legislative, or administrative findings of constitutional or statutory violations. 98 S.Ct. at 2757-58.

Unlike minority racial group members who can point to a past history of discrimination as justification for present preferential treatment, the ‘young’ can point to no such history. Unlike women, who may claim—or have claimed for them—some special benefit, *Kahn v. Shevin*, 416 U.S. 351 (1974), the ‘young’ can identify no deprivations.

C. Ousting Older Employees To “Make Room For The Young” Is Unjust.

Ultimately, the plaintiffs’ case need not rise or fall upon the acceptance, or rejection, of the arguments concerning the validity of the factual underpinnings

of mandatory retirement as serving the end of making room for the young. Nor, indeed, need the case law be an inescapable guide to final conclusion here. Without suggesting that either the factual issues or the legal analysis are irrelevant, amicus would urge that there is an even higher concern here—that of justice.

Justice is after all disserved by a system which discards able, older men and women simply because they are aged 60 and there are younger people waiting in line for their jobs.

We are not talking about some mere restructuring of economic circumstances when we speak of mandatory retirement. Employment obviously does play a very large role in a family’s or an individual’s financial security. But work serves other, enormously significant functions in addition to providing financial sustenance. For many, work is the very source of self-identification: it is a psychological mooring to which many of us are tightly bound. In sum, we are what we do:

. . . Another aspect of our society of great importance in the consideration of retirement and employment in old age, and closely related to the accent on youth, is the importance it assigns to work. In our culture with its strong Puritan tradition, work has a unique value. It is the symbol of worth, success, and achievement. It confers status and prestige on the worker which he can acquire in no other way. It is the evidence of his acceptance by and contribution to society, and the source of most of his meaningful social contacts. Moreover, the wage received for a job attests to its value and itself becomes a symbol of social acceptance. Hence, unpaid work does not confer

the prestige of a paid job and is not a satisfactory substitute for it. The lack of self-maintaining work in old age is therefore a symbol of social failure, a visible justification for the generally inferior social status accorded to the aged in our society.

Mathiasen, G. (ed.), *Criteria for Retirement* 66 (1953).

Take away his work—that source of psychological and ego sustenance—and the individual is seriously impaired. Indeed, the American Medical Association reports that involuntary loss of work can lead to both mental and physical debilitation. “Retirement—A Medical Philosophy and Approach”, Committee on Aging, American Medical Association, at 1-3.

What the government here argues is that it is entirely appropriate to deprive an individual—an individual able to perform—of his job, at least so long as that deprivation is perpetrated in the name of benefiting others: the younger men and women in the hierarchical structure. This is a posture which flies in the face of our most basic notions of justice. For our society has regularly rejected as a suitable system one where legal burdens are imposed by the law unrelated to individual responsibility.

Granted, in light of *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307 (1975), the standard to be applied in assessing the constitutionality of age-based classifications—conceivably even those extending a preference to the young—is that of rationality, a lesser test than that applied in the race area, and the gender area, *Califano v. Webster*, 430 U.S. 313 (1977). But in *Murgia*, there was an extensive record establishing both the extreme rigor of policing, and the correlation of physical failure, particularly in the cardi-

ovascular system, with advancing age. Here, the record goes the other way, providing no basis for distinguishing 60-year-olds from 70-year-olds, Foreign Service officers from other federal employees engaged in equivalently rigorous—or mundane—employment.

Most important for the purposes of demonstrating *Murgia's* contrast with the instant case is the fact that there, Massachusetts' purpose was to “protect the public by assuring physical preparedness of its uniformed police.” 427 U.S. at 314. Here, older employees are deprived of employment, not because their proven susceptibility to a sudden physical disability endangers the public safety, but simply because they stand in the way of their younger ambitious colleagues.

Of course, we can all deplore an economy which lacks sufficient jobs for all. We can even accept, for the sake of argument, that mandatory retirement offers some sort of release valve, in some measure, from this situation. We cannot endorse as just, however, a system which economically and psychologically disenfranchises one group simply to advantage another.

II. THE COMPULSORY RETIREMENT OF FOREIGN SERVICE EMPLOYEES SOLELY BECAUSE THEY ATTAIN THE AGE OF SIXTY IS NOT RATIONALLY RELATED TO THE GOAL OF MAINTAINING A PHYSICALLY AND INTELLECTUALLY COMPETENT WORK FORCE

A second rationale advanced for the Foreign Service retirement statute is to ensure that its employees possess the physical and mental vitality necessary to properly perform their jobs. As a general rule, the government theorizes, it is reasonable to assume that the demands of overseas assignments will gradually take their toll on Foreign Service employees, rendering

them unfit to function effectively after their sixtieth birthday.

A governmental objective to employ competent individuals is, of course, a legitimate one. And it is understood that policies may be adopted to achieve that objective. But if the policies result in discriminatory conduct in which one group is injured while another is benefitted, the rationality of the policy must bear scrutiny. Here, neither the evidence in the record nor this Court's opinion in *Murgia* support the government's contention that mandatory retirement in this situation is fairly and substantially related to that goal.

A. The Challenged Statute Unfairly Singles Out Only Foreign Service Personnel For Early Mandatory Retirement

The theory that the rigors of overseas employment undermine the ability of those over sixty to competently perform their jobs is manifestly disproved by the experience of tens of thousands of government employees who work abroad without being subject to early mandatory retirement.³ This fact clearly distinguishes the statute here at issue from the provision this Court upheld in *Murgia*.

There, Massachusetts law required uniformed state police officers to retire at age 50. Other law enforce-

³ At the time this case was decided by the district court, most of these employees were subject to Civil Service mandatory retirement at age 70. 5 U.S.C. 8335(a). That provision has been repealed by the Age Discrimination in Employment Act Amendments of 1978, Pub. L. No. 95-256, 92 Stat. 189. Most federal employees are as a result no longer subject to mandatory retirement at any age.

ment employees were not compelled to retire at such an early age. This disparity in treatment was justified, however, by the concededly unique role played by the uniformed branch:

The sections do set a maximum retirement age for uniformed officers which is less than that set for other law enforcement personnel. It has never been seriously disputed, if at all, however, that the work of uniformed state officers is more demanding than that of other state, or even municipal law enforcement personnel. It is this difference in work demands that underlies the job classification.

427 U.S. at 315 n. 8.

The record in the case at bar reveals a wholly different situation. Weighing the evidence before it, the district court found as a factual matter that: (1) thousands of government employees not subject to mandatory retirement at 60 work abroad; (2) these employees face circumstances and perform jobs substantially similar to Foreign Service employees; and (3) there was no indication these employees serve overseas for significantly shorter periods of time than their Foreign Service counterparts. 436 F.Supp. at 136-38.

The only salient difference the district court could discern between the 4,787 Foreign Service personnel stationed abroad in 1976 and the approximately 53,000 other government employees⁴ working beside them was that only the former were singled out for mandatory retirement at age 60. The lower court quite properly

⁴ 436 F.Supp. at 136. The government indicates that in 1977, the number of American civilians working for the government abroad was about 100,000 (or 134,000 if those working in U.S. Trust Territories were counted). Appellants' Brief, at 24 n.26.

concluded "[t]his system is patently arbitrary and irrational." 436 F.Supp. at 139. Its decision should be affirmed on this narrow ground alone.

B. There Is No Significant Correlation Between Chronological Age And The Ability To Perform Foreign Service Jobs

Even were there some meaningful difference between Foreign Service personnel and other government employees working abroad, the statute requiring the former to retire at age 60 would still be constitutionally defective. As this Court made abundantly clear in *Murgia*, the mere incantation of a legitimate governmental objective is insufficient to justify an age-based discrimination. Rather, the classification must fairly and substantially further the purpose articulated by the legislature. See also *Gault v. Garrison*, 569 F. 2d 993 (7th Cir. 1977), *pet. for cert. filed*, 47 U.S.L.W. 3059 (April 24, 1978). Cf. *Houghton v. McDonnell Douglas Aircraft Corp.*, 533 F.2d 561 (8th Cir. 1977), *cert. denied*, 434 U.S. 966.

Thus, the *Murgia* Court did not end its inquiry once it ascertained the reason for Massachusetts' challenged retirement statute. Even though its objective "to protect the public by assuring physical preparedness of its uniformed police" (427 U.S. at 314) was unquestionably legitimate, the Court looked to whether the age classification reasonably promoted that important end—not by conjecture and hypothesis, but by a careful examination of the evidence and data in the record.

Through this process, the Court discovered that the work performed by uniformed police was uniquely arduous, requiring rigorous physical strength, agility and stamina. Reviewing the testimony of three physicians who testified at trial about "the psychological

and physiological demands involved in the performance of uniformed police functions [...] the relationship between aging and the ability to perform under stress [, and] . . . aging and the ability to safely perform police functions", 427 U.S. at 311, the Court concluded that the evidence "clearly established that the risk of physical failure, particularly in the cardiovascular system, increases with age, and the number of individuals in a given group incapable of performing stress functions increases with the age of the group." *Id.*

Thus, the statute at issue in *Murgia* was established—by specific empirical evidence—as bearing a substantial relationship to its purpose. The provision culled out older policemen, who by testimony were shown to be increasingly susceptible to physical impairments impeding their ability to perform the arduous work demanded by those charged with securing public safety.

In sharp contrast, the only objective evidence in the record concerning the relationship between age and the ability to perform the mostly white collar jobs held by Foreign Service personnel was introduced by appellees. This evidence refuted point by point the government's conclusory assumptions concerning the fitness of older adults to work overseas after reaching mandatory retirement age, and affirmatively demonstrated that Foreign Service employees between 60 and 70 are in no way unable to perform their roles as effectively as their younger colleagues.

The Government did not rebut this showing; it produced no probative evidence to support its theory that the rigors of working abroad inevitably take their toll on the physical and intellectual vigor of its employees.

Indeed, it could not. The experience of the social sciences runs counter to this assumption.

In Appendix A of this brief there is a partial list of noteworthy achievements accomplished by persons past the age of 69. These speak eloquently of the irrelevance of chronological age to productive capacity. The gerontological studies to date confirm this fact on a more mundane level.

The relationship between aging and ability to perform a job as measured in actual employment situations has been the subject of relatively few studies.⁵ A

⁵ Bureau of Labor Statistics, Dept. of Labor, Bull. No. 1223, *Comparative Job Performance by Age: Large Plants in the Men's Footwear and Household Furniture Industries* (1957).

This study found a slight increase in productivity among older workers.

Bureau of Labor Statistics, Dept. of Labor, Bull. No. 1273, *Comparative Job Performance by Age: Office Workers* (1960).

This study reported greater productivity by older workers.

Canadian Dept. of Labor, Economics and Research Branch, *Age Performance in Retail Trade* (1959).

This study found that older department store workers were equal to, or better than those younger, with peak performance at ages 51-55.

Clay, "A Study of Performance in Relation to Age at Two Printing Works" 11 *Journal of Gerontology* 417 (1956).

This researcher concluded that machine compositors and hand compositors showed a slight decline in productivity after age fifty, while older readers maintained a higher level of performance than younger ones until retirement.

Hakkinen, *Traffic Accidents and Driver Characteristics* (1958).

This study of Helsinki bus and tram drivers found no correlation between age and accidents.

Norman, "Professional Drivers and Road Safety" in *Proceedings of the Second Congress of the International Association for Accidents and Traffic Medicine* (1966).

Department of Labor study of office workers found that older workers perform as well as, or better than, younger employees.⁶ Surveys of employers rating characteristics of older employees relative to younger employees found that older workers tend to be rated as equal or superior to those younger.⁷ Those in positions to make hiring decisions believe that older workers are capable of continued work.⁸ The results of these studies suggest that if any age group characteristic is significantly related to job performance, then experience is the most significant variable in predicting effectiveness.⁹

The available data also lends no support to the assumption that intellectual ability and "vigor" de-

This study of London bus drivers found the safest age range to be 60-64, with no significant decline for those older.

Palmer and Brownell, "Influence of Age on Employment Opportunities" 48 *Monthly Labor Rev.* 765 (1939).

These researchers found no correlation between age and output in surveying six New England companies.

Walker, "The Job Performance of Federal Mail Sorters by Age" 87 *Monthly Labor Rev.* 296 (1964).

This study of postal workers found a slight decrease, less than 10%, in performance after age 60.

⁶ Dept. of Labor Bull. No. 1273, *Office Workers*, *supra*.

⁷ Peterson, "Older Workers and Their Job Effectiveness" in *Gerontology* (C. B. Vedder, ed., 1963). This survey covered more than 3,000 older workers employed at 81 organizations.

⁸ Louis Harris and Associates, Inc., *The Myth and Reality of Aging in America* 213 (1975): 52% of those with responsibility for personnel decisions agreed with this statement—"Most older people continue to perform as well on the job as they did when they were younger."

⁹ A. Heron and S. Chohan, *Aging and the Semi-Skilled: A Survey in Manufacturing in Merryside, London* (1961).

cline with advancing age. It is a generally accepted proposition that chronological age is a highly unsatisfactory measure of occupational utility and adaptability. No objective evidence is available to support any generalized relationship between age and mental ability as measured by productivity, particularly where the nature of the work requires the significant utilization of intellectual capacity.¹⁰ Using age as the sole index of intellectual functioning ignores the fact that intelligence is not a unitary quality, and that some intelligences are not age related, while others vary with age in different ways.¹¹

That there is no demonstrable relationship between Foreign Service mandatory retirement age and the physical or mental capacity to perform Foreign Service jobs renders the provision irrational. It is also wholly unnecessary. The Foreign Service already has in operation a mechanism fully capable of culling out unfit or incompetent employees—its selection-out process. See Appellants' Brief, 26-28.

In *Murgia*, there was no such reasonable alternative. The evil to be avoided was the risk of sudden physical incapacity, which might well endanger public safety. The empirical evidence demonstrated the likelihood of such an episode increased with age. Although "a number of detailed studies", 427 U.S. at 311, could help evaluate an individual's susceptibility to cardiovascular problems, their limited predictive ability (and cost) did not outweigh the potential dangers.

¹⁰ Heron & Chowan, *supra* at n.9 pp. 6, 140; National Council on the Aging, *Utilization of Older Professional and Scientific Workers* 9 (1961).

¹¹ Botwinick, *Aging and Behavior* 196 (1973).

Here there is no public safety interest involved—the purpose of the Foreign Service retirement policy is not to avoid some future occurrence fraught with jeopardy to life and property. Rather, the provision is allegedly fashioned to weed out employees whose physical or intellectual vigor has slowly deteriorated over time, rendering them unfit for continued service. This gradual decay, if indeed it exists, would be easily detected by evaluating actual performance to determine whether ability or productivity has declined. This is precisely what the selection-out process measures. But unlike mandatory retirement, selection-out is closely tailored to its purpose. It culls out only those whose performance, for whatever reason, is not up to par—and on the basis of proven fact, not presumption.

Rationalizations for legislative line drawing cannot take the place of rational reasons. Admittedly, the equal protection clause does not require that statutory classifications be drawn with mathematical precision. The government's mandatory retirement scheme would not be constitutionally objectionable merely because a relatively few physically and intellectually fit Foreign Service employees were drawn into its web, so long as it generally served its purpose.

But that does not mean that lines can be drawn at random. The vice of the statute challenged here is precisely that it is left to conjecture and speculation whether it is promoting its articulated objective at all. Indeed, the fact that those subject to mandatory retirement are the "cream of the crop"—men and women who, on the basis of demonstrated merit, have survived the very competitive selection-out process—strongly indicates the provision "has the effect of excluding from service so few [Foreign Service] employees who are in

fact unqualified as to render age [60] a criterion wholly unrelated to the objective of the statute." *Murgia*, 427 U.S. at 316.

CONCLUSION

For the foregoing reasons, amicus National Council of Senior Citizens, Inc., urges this Court to affirm the decision of the court below.

Respectfully submitted,

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Sept. 22, 1978

APPENDIX

APPENDIX A

Accomplishments Past the Age of 69 (1975)

I. Architecture

Walter Gropius 1883-1969	Active member of The Architects Collective until death at 86; U.S. Embassy in Athens at 77.
Louis Kahn 1901-1974	Yale Mellon Center for British Studies at 71.
LeCorbusier (Charles-Edouard Jeanneret) 1887-1965	La Tourette Monastery at 73; Chandigarh, India at 75.
Mies van der Rohe 1886-1969	Seagram Building at 70; National Gallery, Berlin 76-82.
Frank Lloyd Wright 1869-1969	Baghdad Opera at 88; Guggenheim Museum completed at 90.

II. Art

Giovanni Lorenzo Bernini 1598-1680	Ponte Sant'Angela; Tomb of Alexander VII; one of the designers of St. Peters; Altieri Chapel with death of the Blessed Ludovica Albertoni.
Marc Chagall 1887-	Painter active into 80's.
Salvador Dali 1904-	Surrealist still active at 71.
Marcel Duchamp 1887-1968	Painter active until death at 81.
Max Ernst 1891-	Painter active into 80's.
Vasili Kandinski 1866-1944	Russian post-impressionist painter who founded new abstract school with Paul Klee; active until his death at age 78.
Michelangelo 1475-1564	Greatest works up to time of death at 89.

Joan Miro 1893-	Painter, sculptor, still active at 78.
Grandma Moses (Anna Moses) 1860-1961	Began to paint at 72.
Pablo Picasso 1881-1973	Still active past 90.
David Siquieros 1896-1974	Mexican muralist active until death at 78; "March of Humanity" (50,000 sq. ft. mural) executed in 70's.
Edward Steichen 1879-1973	Photographer, Director Emeritus of Department of Photography, Museum of Modern Art; edited <i>The Family of Man</i> at 76; one man exhibit at MOMA at 82.
Tintoretto (Jacopo Robusti) 1518-1594	Worked until death at 81.
Titian 1477-1576	Portraits of Pope Paul III; completed Pieta immediately before death at 99.

III. Business and Labor

Bernard Baruch 1870-1965	73 when wrote report on post-war conversion of American economy; appointed to U.N. Atomic Energy Committee at 76.
Harry Bridges 1900-	Labor leader, still active at age 75.
Cyrus Stephen Eaton 1883-	Published: <i>Is the Globe Big Enough for Capitalism and Communism?</i> at 75; <i>Canada's Choice</i> at 76; <i>The Engineer As Philosopher</i> at 78; holds nine directorships; Trustee, Denison University; University of Chicago.
Alfred Fuller 1885-1973	Chairman of Board of Fuller Brush Co. at 83.
Cary Grant 1904-	Head of Faberge Perfumes at 71.
John L. Lewis 1880-1969	President of United Mine Workers of America from age 40 to 80.

George Meany 1894-	President of AFL-CIO at 81.
Bill Ricketts	Present Chairman of Chappel's, the international music firm, age 90.
Col. Sanders (fried chicken)	Started at 66; now 82.

IV. Cinema

Luis Buñuel 1900-	Director, still active at 75; directed <i>Tristana</i> at 70; <i>The Petit Charm of the Bourgeoise</i> at 72; <i>The Phantom of Liberty</i> at 74.
Charlie Chaplin 1889-	Published <i>My Autobiography</i> at 75; wrote and directed "A Countess From Hong Kong" at 78.
Vittorio de Sica 1902-1974	Directed <i>Garden of Finzi-Continis</i> at 70; <i>Brief Vacation</i> at 71.
Alfred Hitchcock 1899-	Motion pictures and television producer; still active at 76; <i>Frenzy</i> at 73.
Jean Renoir 1894-	Directed <i>C'est La Revolution</i> at 73; <i>La Petit Theatre de Jean Renoir</i> at 77.

V. Education

William Benton 1900-1973	Publisher of 15th Edition of <i>Encyclopedia Britannica</i> at 73.
James Bryant Conant 1893-	Thomas Jefferson and the Development of American Public Education at 69; <i>The Education of American Teachers</i> at 70; <i>Two Modes of Thought</i> at 71; <i>Shaping Educational Policy</i> at 71; <i>The Comprehensive High School</i> at 74; <i>My Several Lives—Memoirs of a Social Inventor</i> at 72.
Sir Alan Gilbert	Continues to teach (Drew University) at 82; since retirement at 69, has written, translated or edited six books and published 17 scholarly articles.
Noah Webster 1758-1843	Published <i>American Dictionary of English Language</i> at 70; published a revision of the <i>Authorized Version of the English Bible</i> at 75.

René Wellek
1903-

Working on 5th volume of *History of Modern Criticism* at 72.

VL Fiction and Poetry

Melville Cane
1879-

At 92, a practicing lawyer; commissioned to write commemorative poem for Phi Beta Kappa's bicentennial in 1976; author of *Make a Poem* at 74; *And Pastures New* at 77; *Bullet-Hunting* at 81; *To Build A Fire* at 85; *So that It Flower* at 87; *All and Sundry*, autobiography published at 89; co-editor *The Man From Main Street*, at 74; *The Golden Year* at 81.

Agatha Christie
1890-

Mystery writer, active at age 85, 14 novels after age 69.

Jean Cocteau
1891-1963

Writer, poet.

Noel Coward
1899-1973

Playwright.

T. S. Eliot
1888-1965

On *Poetry and Poets* at 69; *The Elder Statesman* at 70; *Collected Poems* (1909-62) published at 75.

Robert Frost
1874-1963

From age 69-75, Ticknor Fellow in Humanities at Dartmouth; Ambassador of Good Will to South America at 80, Israel and Greece at 87, Russia at 88; Congressional Gold Medal at 88; represented the Arts at John F. Kennedy's inauguration at 87; wrote a *Masque of Reason* at 71; *Steeple Bush* at 73; *A Masque of Mercy* at 73; *In the Clearing* at 87.

Johann Wolfgang von Goethe
1749-1832

Second part of *Faust* completed at 82.

Pär Lagerkvist
1891-1974

Pilgrim at Sea at 71; *Marianne* at 78.

Melchior Lengyel

Playwright, still active at age 92.

Marianne Moore
1887-1972

Poet, active until death at age 85.

Vladimir Nabokov
1899-

Novelist still active at 76; *Ada* at 70; *Glory* at 72.

Ezra Pound
1885-1972

Latest installment of the *Cantos* at 74; *Sophoclean Translation*, *The Woman of Trachis* at 71; *Translation of the Classic Anthology Defined by Confucius* at 69.

George Ryaal
(*Audax Minor*)

Writes a weekly column on horse racing for the *New Yorker* at age 80.

Rex Stout
1886-

Writer of mystery novels, 91.

Mark Twain
(*Samuel Clemens*)
1835-1910

Active until death at 75; *What is Man?*, *Eve's Diary* at 71.

Thornton Wilder
1897-

Novelist & Playwright; *The Eighth Day* at 70; *Theophilus North* at 76.

Walt Whitman
1819-1892

Good-bye, *My Fancy* at 70.

P. G. Wodehouse

Author of 23 novels after age 69.

VII. Government and Heads of State

Konrad Adenauer
1876-1967

Chancellor of West Germany, 73-87.

King Gustaf VI Adolf
1882-1973

Ruler of Sweden until 91.

David Ben-Gurion
1886-1973

Prime Minister and Minister of Defense from Israel's formation at 62 to 77; Member of Knesset from 77 to 79.

Sir Alexander Bustamante
1884-

Prime Minister at 78; active politically at 91.

Winston Churchill
1874-1965

Leader of wartime government at 71.

Georges Clemenceau
1841-1929

Prime Minister of France during World War I at 76.

Chiang Kai-Chek
1887-1975

Head of Nationalist Chinese Government on Formosa until 88.

Chou En Lai
1898-

Premier of China at 77.

Charles De Gaulle 1890-1970	President of France for over 20 years until age 79.
Sam Ervin 1896-	Chaired Senate Watergate Committee at 76.
Francisco Franco 1892-	Spanish head of state at 83.
Benjamin Franklin 1706-1790	Delegate to Second Continental Congress in 69th year; one of five drafters of Declaration of Independence at 70; afterwards Ambassador to France until 79; attended Constitutional Convention of 1787 at 81.
Gandhi 1869-1948	✓ Arrested at age 73 as leader of Indian Independence Movement; active till death at 79.
Malana Hamid	Bangladesh opposition leader at age 90.
Paul Hoffmann 1891-1974	U.N. administrator; managing director of U.N. Special Fund till 75; of U.N. Development Program till 83.
Ismet Inonu 1884-1973	Re-elected prime minister of Turkey at 77, served to 81; leader of opposition party until 88.
Jomo Kenyatta 1893-	President of Kenya from age 70, now 82.
Jawaharlal Nehru 1889-1964	Prime minister of India until death at 75.
Pope Paul VI 1897-	Elected at 66, now 78.
Sarvepalli Radhakrishnan 1885-1975	President of India until 79.
Samuel Rayburn 1882-1961	Speaker of the House at 78.
Eisaku Sato 1901-	Prime Minister of Japan at 70; President of Liberal Democratic Party at 73.
Emperor Haile Selassie 1891-1975	Ruler of Ethiopia until deposed at 83.

Marshall Jossip Broz Tito 1892-	President of Yugoslavia at 83.
Mao Tse-Tung 1893-	Chairman People's Republic of China at 82.
Eamon de Valera 1882-1975	President of Ireland until age 91.
Walter Ulbricht 1893-1973	Chairman of DDR Communist Party until 78.

VIII. Presidents of the United States

James Buchanan 1791-1868	Inaugurated at 65; 69 at end of term.
Dwight Eisenhower 1890-1969	Inaugurated at 62; 70 at end of term.
Andrew Jackson 1767-1847	Inaugurated at 61; 70 at end of term.
Harry S. Truman 1884-1973	33rd President; 69 at end of term; active until 89.

IX. Historians and Political Theorists

W.E.B. DuBois 1868-1963	Professor at Atlanta University until 76; Founder of Phylon magazine at 72; politically active until death at 95; <i>Dusk at Dawn</i> at 72.
Will Durant 1885-	The Story of Civilization: Vol. VI, The Reformation at 72; Vol. VII, The Age of Reason Begins (with Ariel Durant) at 76; Vol. VIII, The Age of Louis XIV (with A. Durant) at 78; Vol. IX, The Age of Voltaire (with A. Durant) at 80; Vol. X, Rousseau and Revolution (with A. Durant) at 82; The Lessons of History (with A. Durant) at 83; Interpretations of Life (with A. Durant) at 85; History of the Revolutionary Years 1640-1660.
Thomas Hobbes 1588-1679	Continued writing and publishing until death at 91.
Alexander Kerensky 1881-1970	Provisional Government of 1917 In Documents—3 volumes at 80; Russia and History's Turning Point at 84.

Samuel Eliot Morison
1887-

Eminent American historian; 14 books after age 69, including Pulitzer Prize; *The European Discovery of America: The Southern Voyages* at 87.

X. Journalists

Arthur Krock
1886-1974

Journalist, retired from Times Washington Bureau at 80; 4th Pulitzer at age 89.

Walter Lippmann
1889-1974

Pulitzer prizes at 69 and 73; Overseas Press Club Award; active daily columnist until age 78, and occasional contributor to Newsweek until 82.

XI. Law

A. Judges

Tanaka Kotaro
1890-1974

Chief Judge, Japanese Supreme Court to age 70; served on International Court of Justice in The Hague, ages 71-79.

Chief Justices of Supreme Court

Melville Fuller
1888-1910

Age at installation, 65; age at end of term, 77.

Charles E. Hughes
1862-1948

Age at installation, 63; age at end of term, 79.

John Marshall
1755-1835

Age at installation, 46; age at end of term, 80.

Harlan Stone
1872-1946

Age at installation, 69; age at end of term, 74.

William H. Taft
1857-1930

Age at installation, 64; age at end of term, 73.

Roger Taney
1777-1864

Age at installation, 59; age at end of term, 87.

Morrison Waite
1816-1888

Age at installation, 58; age at end of term, 72.

Earl Warren
1891-1974

Age at installation, 62; age at end of term, 78.

Edward White
1845-1921

Age at installation, 65; age at end of term, 76.

Present Supreme Court

William O. Douglas
1898-

Age at installation, 41; now age 77.

Judges

Hugo Black
1886-1971

Age at installation, 51; age at end of term, 85.

Louis Dembitz Brandeis
1856-1941

Age at installation, 60; age at end of term, 83.

Learned Hand

On the bench until 79.

John Marshall Harlan
1899-1971

Age at installation, 41; age at end of term, 71.

Oliver Wendell Holmes
1841-1935

Age at installation, 61; age at end of term, 91.

Judge Harold Medina
1888-

Senior Judge in the Second Circuit at 83.

As of 1975, 47 Senior Circuit Court Judges and 102 Senior District Court Judges active in Federal Judiciary.

B. Lawyers

Herman Arthur Fischer

Chairman of the Board, Gary-Wheaton Bank from age 70 to age 84; active in law practice at age 90.

Sam Markewich
1882-

Practicing lawyer at the age of 87.

C. Professors

Paul E. Basye
(Hastings)
1901-

At 69, 2nd edition Clearing Land Titles.

William Wirt Blume
(Hastings)
1893-

At 70, aid in preparation of Michigan Civil Procedure; two extensive articles, Hastings Law Journal at 73 and 77.

Jerome Hall
(Hastings)
1901-

"Archives for Philosophy of Law and Social Philosophy" at 69; "Legal Thought in the U. S. A. under Contemporary Pressures"; "Justice in the 20th Century", soon to be published; "Jurisprudential Theories and the

Effectiveness of the Law", to be published in *Nomos*; will present paper to American Society for Political and Legal Philosophy at annual meeting.

Frederick Kessler
1901-

Educator and law professor.

Norman D. Lattin
(Hastings)
1894-

Recently, new edition of text on *Corporations*.

Frederick J. Moreau
(Hastings)
1893-

After Age 70: Two large supplements to two-volume work which appeared initially in 1957; two surveys of California Law, 140 pages total; just agreed to do 3rd supplement to above.

George E. Osborne
(Hastings)
1893-

2nd edition of text on *Mortgages* at 77; *Cases on Suretyship* at 73; *Cases on Secured Transactions* at 74.

Rollin M. Perkins
(Hastings)
1889-

Cases on Criminal Law and Procedure (3rd ed.) at 77; Perkins on Criminal Law (2nd ed.) at 80; "The Vagrancy Concept", 9 *Hast. L. J.* 237 at 69; "Collateral Estoppel in Criminal Cases", at 71, at *U. of Ill. L. J.* 533; "Analysis of Assault and Attempts to Assault", 47 *Minn. L. R.* 71 at 73; "Corpus Delecti of Murder," 48 *Va. L. R.* 173 at 73; "Alignment of Sanction with Culpable Conduct", 49 *Ia. L. R.* 325 at 75; "Some Weak Points in the Model Penal Code", 17 *Hast. L. J.* 3 at 76; *Book Reviews*: Glueck: Roscoe Pound and Criminal Justice, 11 *N. Y. Law Forum* 725 at 77; Packer: Limits of the Criminal Sanction, 15 *N. Y. Forum* 442 at 79.

Roscoe Pound

Professor at Harvard Law School from 66 to 77; after age 77, active in numerous legal, editorial and educational positions, including a reorganization of the Nationalist Chinese Judicial System.

Richard R. Powell
(Hastings)
1890-

Books: Abridgement of Treatise on Real Property (with P. J. Rohan) at 78; Wills and Trusts (preliminary edition of Columbia and Michigan—3 installments—1959, at 69; Truncated Readings in the Law of Future Interests for California, 1 vol., 1962, at 72; *Articles*: "Perpetuities in Arizona", *Ariz. L. R.* 225 (1959) at 69; "Perpetuities", *Encyclopedia Britannica* (1959) at 69; "Relation Between Property Rights and Civil Rights", 15 *Hast. L. J.* 135; "Race and Property", *Diablo Press*, 1964 at 71; "New Powers of Appointment Act", 103 *Tr. & Est.* 807 (1964) at 74; "Rac. Dis. in Housing in Cal.", 18 *Va. L. R. W.* (1965) at 75; "Alaskan Earthquake of 1964", 18 *Hast. L. J.* 365 (1967); "Freedom of Alienation—For Whom", 2 *Real Orio, Oribate & Trust J.*, 127 (1967) at 77; "Powers of Appointment in Cal.", 19 *Hast. L. J.* 1281 (1968) at 78; "Elliot E. Cheatham—Gentleman", 22 *Vand. L. J.* 16 at 78; "Law and Its Impact on the Family (for Law wives of Hastings) at 78; "The Growth of the Law" (ed.), at 80; "How Free Is It Socially Desirable . . .", *Record, Assn. of Bar, City of New York* at 81.

In addition: 24 addresses given since 1960 (since age 70); *Book Reviews*: Scott *Abr.* 46 *Corn. L. Q.* 375 at 71; Dietz, *In Defense of Property*, 17 *Stan. L. R.* 779 at 75; Anderson, *Amer. Law of Zoning* (4 vols.), 20 *Hast. L. J.* 1163 at 79; *Three studies* made for New York Law Revision Commission at 72, at pp. 487-99, 515-20, 603-04; *Study* for Cal. Law Revision Commission at 77; "Powers of Appointment, With Proposed Draft Statute."

After age 70: 3rd edition of text on *Torts*; Reporter of new *Torts Restatement*.

William L. Prosser
(Hastings)
1898-1974

- Lewis M. Simes
(Hastings)
1889-
Improvement of Conveyancing by Legislation at 71 (with C. E. Taylor); Model Title Standards at 71 (with C. E. Taylor); Handbook for More Efficient Conveyancing at 72; 2nd ed. Handbook of Future Interests at 77; "Perpetuities in California Since 1951" (Hast. L. J. 1967) at 78.
- Roscoe T. Steffen
(Hastings)
1893-
"The Private Placement Exemption", 30 U. Chi. L. R. 211 at 70; Cases on Commercial and Invesement Paper, 3rd ed. at 71; "Enterprise Liability: Some Exploratory Comments", 17 Hast. L. J. 165 at 72; "Private Placements Should Be Registered", 43 N. C. L. R. 548 at 72; Cases on Agency-Partnership, 3rd ed., at 76.
- Clarence M. Updegraf
At 73, Article, 17 Hast. L. J. 473; at 77, 3rd ed. of Arbitration and Labor Relations; published, at 78, book review of Labor Relations Between Public Employees and Employers (Sullivan).
- Harold E. Verbal
(Hastings)
1902-
At 69, new edition of book on Community Property.

XII. Music and Dance

- George Balanchine
1904-
Director and chief choreographer of New York City Ballet at 71.
- Karl Boehm
1894-
Conductor, still active at 81.
- Nadia Boulanger
1887-
Still active teaching musical composition at 88.
- Pablo Cassals
1876-1973
Active past the age of 90.
- Rudolf Friml
1879-
Active as composer and pianist past 90.
- Martha Graham
1894-
Active as choreographer at 81; active as dancer until 78.
- Franz Joseph Haydn
1732-1809
Composer, active until his death at age 77.

- Otto Klemperer
1885-1973
Active as conductor until age 87.
- Joseph Krips
1896-1974
Conductor, active at age 76.
- Jean Philippe Rameau
1683-1764
Last great operas from age 74-77.
- Artur Rubenstein
1889-
Pianist still active at 86.
- Charles Camille Saint-Saens
1835-1921
Wrote a number of operas from age 69-76; a series of works for wind instruments and piano from 80 to 86.
- Leopold Stokowski
Conductor of the American Symphony Orchestra at age 90.
- Robert Stoltz
Composer, active at age 91.
- Igor Stravinsky
1882-1971
Composer, active until his death at age 88.
- Georg Phillipp Telemann
1681-1767
Finest musical works when over 80.
- Arturo Toscanini
1867-1957
Conducted until age 87.
- Giuseppe Verdi
1813-1901
Opera composer, completed Otello at 72, Falstaff at age 80.

XIII. Philosophy

- Henri Bergson
1859-1941
Deux Sources de la Morale et de la Religion at 71; La Pensee et le Mouvant at 73.
- Brand Blanchard
1892-
Educator and Philosopher; at 70 visiting prof. at U. of Minn. and pub. Reason & Analysis.
- Franz Brentano
1838-1917
Aristoteles Lehre vom Ursprung at 73; Kategorienlehre from 73-76; Versuch uber die Erkenntnis until death.
- Ernst Cassirer
1874-1948
"Essay on Man" at 70; Myth of the State at 71 (died at 71).

- John Dewey**
1859-1952
Common Faith at 75; *Logic, The Theory of Inquiry* at 79.
- Charles Hartshorne**
1897-
Educator and Philosopher.
- Martin Heidegger**
1889-
Unterweis zur Sprache at 70; *Nietzsche* at 72; *Die Frage Nach Dem Ding* at 73; *Kants These Uber das Sein* at 74; *Die Technik und die Kehre* at 74.
- William E. Hocking**
1873-1966
Meaning of Immortality in Human Experience at 84.
- Immanuel Kant**
1724-1804
Religion within the Limits of Reason Alone at 69; *Eternal Peace* at 71; from 71-80, six works at 816 total pages.
- Horace Meyer Kallen**
1882-
Educator and Philosopher.
Distinguished Seminar Professor at Long Island University from age 82 to 86; *Published: Secularism is the Will of God*, at 72; *Cultural Pluralism and the American Idea*, at 74; *Utopians at Bay*, 76; *The Book of Job as Greek Tragedy*, at 77; *A Study of Liberty*, at 77; *Philosophical Issues in Adult Education*, at 80; *Freedom, Tragedy, and Comedy*, at 81; *Laughter and Tears*, at 86.
- C. I. Lewis**
1883-1964
The Ground and Nature of the Right at 71; *Our Social Inheritance* at 72; working on manuscript at time of death at 81.
- Jacques Maritain**
1882-1973
Professor of Philosophy at Princeton from 66 to 73; *Man and the State* at 69; *Creative Intuition in Art and Poetry* at 71; *La Philosophie Morale: examen historique et critique des grand systemes* at 78; English Translation—*The Person and the Common Good* at 84.
- Stephen C. Pepper**
1891-
Concept and Quality at 76.

- Ralph Barton Perry**
1876-1957
Realms of Value at 78.
- Thomas Reid**
1710-1796
Essays on the Active Powers of Man at 78; *Essays on the Intellectual Power of Man* at 75.
- Bertrand Russell**
1872-1970
Nobel Prize for Literature, 1950 at 78.
- George Santayana**
1863-1952
Realms of Being at 77; *Persons and Places* at 80; *Last Puritan* at 72.
- Ashbel Smith**
Professor of Philosophy at the University of Texas for the past six years and continues in this capacity at the age of 73; published *A Natural Theology for Our Time* at 70; also has authored numerous articles in professional journals after passing the age of 70.
- Herbert Spencer**
1820-1903
Synthetic Philosophy (10 vols.) finished at 76.
- James Ward**
1843-1925
Essays in Philosophy at 82.
- Paul Weiss**
1901-
Educator and Philosopher; *Philosophy in Process* 6 Volumes (1968-75); *Making of Men*, 68; *Cinematics*, 73; *Beyond All Appearances*, 72; *Sports: A Philosophical Inquiry*, 71; Hofstra Distinguished Scholar Medal, 72; Fellow Ezra Stiles College; Heffer Prof. Philosophy Catholic U. of America, 1969.

XIV. Psychology

Sigmund Freud
1856-1939

Das Unbehagen an der Kultur at 74;
New Series of Vorlesungen zur Einführung in die Psychoanalyse at 76;
Moses, Sein Volk und die Monotheistische Religion at 82.

Carl Jung
1875-1961

Appointed Professor of Medical Psychology at University of Basel at 68.

XV. Religion

Augustine
354-430

The City of God, between 59-72.

Martin Buber
1878-1965

Paths in Utopia at 69; Between Man and Man at 69; Hasidism and the Way of Man at 70; Two Types of Faith at 73; Images of Good and Evil at 74; Elija: ein myster enspiel at 85.

Paul Tillich
1886-

Professor at Harvard Univ. from 69-76; Professor at Univ. of Chicago from 76 to death at 79; 3 vols. Systematic Theology, age 65-77; The New Being at 69; The Eternal Now at 77.

XVI. Sports

George Halas
1895-

Coach of Chicago Bears until 72; President of NFC at 75; still active as Chicago Bears' Chairman of the Board at 80.

Adolph Rupp
1901-

Coach of U. of Ky. basketball until age 71; retired to become President of ABA Memphis Tams.

Casey Stengel
1889-

World championship and Manager of Year at 69; pennant winner at 71; charismatic leader of Mets until 76.